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NOV 17 1993

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In re Application of :
Scott W. Lewis :
Serial No. 07/977,033 : DECISION DISMISSING PETITION
Filed: February 11, 1993 :
Attorney Docket No. JAS-131 :

This is in response to the communication filed July 26, 1993, and a decision on the petition filed February 11, 1993, requesting that the above-identified application be accorded a filing date of November 13, 1992.

On November 16, 1992, the application was deposited.

On December 11, 1992, Application Division mailed a Notice stating that a drawing of Figure 2C described in the specification were required in compliance with 35 USC 111 and that the filing date of the application would be the date of receipt of the omitted drawing.

In response, on February 11, 1993, inter alia, the present petition, a preliminary amendment, a new declaration and a drawing of Figure 2C were filed.

On May 24, 1993, a Decision was mailed dismissing the petition filed February 11, 1993, because the petition was not accompanied by the requisite petition fee.

In response, on July 26, 1993, a communication, including a \$130.00 check and a supplemental declaration, was filed.

In the petition, petitioner argues that the drawing of Figure 2C was submitted to correct a clerical error. Petitioner requests that the application be accorded a filing date of November 13, 1992.

MPEP 608.01(f) states, in part, that an application is considered incomplete if it omits drawings which are described in the specification.

A review of the supplemental declaration reveals that it is not does not include the specific language required by 37 CFR 1.67 and 37 CFR 1.68. Therefore, the supplemental declaration is not in compliance with 37 CFR 1.67 and 37 CFR 1.68. Further, in the supplemental declaration, applicant states that the drawing of Figure 2C (which was filed on February 11, 1993) was part of his invention, but requests that the application (including Figure 2C) be accorded a filing date of November 13, 1992.

Clearly, Figure 2C was intended to be a part of the application. Since the application, as filed, referred to Figure 2C, the application was prima facie incomplete in the absence of Figure 2C. The present petition and petition fee were necessary in view of applicant's filing error.

At present, the petition must be dismissed. However, this decision is made without prejudice to reconsideration upon the filing of a request therefor. If the applicant agrees that Figure 2C is unnecessary for an understanding of his invention, the application may be accorded a filing date of November 13, 1992, upon the filing of a request for reconsideration, accompanied by:

- 1) another amendment cancelling page 5, lines 6 and 7, and all other references to the omitted Figure 2C in the specification including any reference numerals shown only in Figure 2C;
- 2) a separate letter requesting cancellation of Figure 2C submitted on February 11, 1993; and
- 3) a supplemental oath or declaration (in compliance with 37 CFR 1.67 and 37 CFR 1.68) by the applicant stating that his invention is adequately disclosed in, and his wish to rely on, the application as thus amended without Figure 2C, and the references thereto in the specification, for purposes of an original disclosure and filing date.

In the alternative, the application is entitled to a filing date of February 11, 1993, the date of deposit of the drawing containing Figure 2C. However, the declaration deposited November 13, 1992, did not refer to Figure 2C, since Figure 2C was not included with the application papers deposited November 13, 1992. Accordingly, a supplemental oath or declaration (in compliance with 37 CFR 1.67 and 37 CFR 1.68) by the applicant stating that the drawing of Figure 2C filed on February 11, 1993, accurately illustrates his invention and was a part of his invention when it was filed is required.

A request for reconsideration (no further petition fee is required) as outlined above, or the supplemental oath or declaration (in compliance with 37 CFR 1.67 and 37 CFR 1.68) referring to the drawing of Figure 2C filed February 11, 1993, must be filed within TWO MONTHS of the date of this decision in order to avoid abandonment. This time period may be extended pursuant to 37 CFR 1.136(a). The response should be directed to the attention of the Office of the Assistant Commissioner for Patents, Crystal Park Building 2, Room 919, Washington, DC 20231.

Fred A. Silverberg

Fred A. Silverberg
Special Program Examiner
Office of the A/C for Patents

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